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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-397

BONELLI CATTLE COMPANY, a California corporation; COUNTY OF MOHAVE, a political subdivision of the State of Arizona,

Petitioners,

vs.

THE STATE OF ARIZONA, THE STATE LAND DEPARTMENT, a Department of the State of Arizona; ANDREW L. BETTWY, State Land Commissioner of the State of Arizona,

Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

GARY K. NELSON
THE ATTORNEY GENERAL OF ARIZONA

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THE STATE OF ARIZONA, THE STATE LAND DEPARTMENT, a Department of the State of Arizona; ANDREW L. BETTWY, State Land Commissioner of the State of Arizona,

Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

Respondents, State of Arizona and its State Land Department and State Land Commissioner, by and through the Attorney General of Arizona pray that a Writ of Certiorari issue to review the judgments and decisions

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-397

ROSELLE CATTLE COMPANY, a California corporation; COUNTY OF MOHAVE, a political subdivision of the State of Arizona,

Petitioners,

vs.

THE STATE OF ARIZONA, THE STATE LAND DEPARTMENT, a Department of the State of Arizona; ANDREW L. BETTWY, State Land Commissioner of the State of Arizona,

Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

Respondents, State of Arizona and its State Land Department and State Land Commissioner, by and through the Attorney General of Arizona, pray that a Writ of Certiorari issue to review the judgments and decisions

of the Supreme Court of Arizona, entered in the above-entitled case on October 4, 1971 and April 13, 1972.

CITATION TO OPINIONS BELOW

The opinions of the Supreme Court of Arizona are reported at 489 P.2d 699 (1971) and 495 P.2d 1312 (1972). These decisions have been filed with the Court by petitioner as Appendix A and B to their petition. The original decision of the Supreme Court of Arizona was filed October 4, 1971. Thereafter a motion for rehearing was filed on April 13, 1972. The Supreme Court of Arizona denied the motion for rehearing and filed its final decision. On joint application of petitioners and respondent, Mr. Justice Douglas, by order dated June (sic) 12, 1972, extended the time for filing a petition for Writ of Certiorari to and including September 9, 1972.

The jurisdiction of this Court is

of the Supreme Court of Arizona, entered in the above-entitled case on October 4, 1971 and April 13, 1972.

CITATION TO OPINIONS BELOW

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The jurisdiction of this Court is

invoked under 28 U.S.C. 1257(3).

STATEMENT

The western boundary of the State of Arizona is formed by the Colorado River. The river, being an alluvial river has during times past changed its course many times, leaving in question the location of the border between Arizona and the states of Nevada and California and leaving serious title questions to lands lying adjacent to the river. The location of the boundary was settled by contract between Arizona and the states of Nevada and California. 80 U.S. Stat. 340 and 75 U.S. Stat. 93. The questions of title to the lands however have never been settled.

Several years ago, the legislative State of Arizona recognizing the serious title problems affecting lands adjacent to the Colorado River, authorized the expenditure of considerable sums of money to attempt

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Several years ago, the legislative State of Arizona recognizing the serious title problems affecting lands adjacent to the Colorado River, authorized the expenditure of considerable sums of money to attempt

to solve these title problems. Senate Bill 190, 1st Regular Session of the 26th Legislature of the State of Arizona. Succeeding legislatures have continued to appropriate money for expenses of the Attorney General incurred for litigation of disputes involving title to land beneath and along the Colorado River.

The statement, beginning at Page 12 of the Petition for a Writ of Certiorari, clearly sets forth the title problem presented in the instant case and the case of United States v Claridge, 279 F. Supp 87, aff'd 9th Cir., 416 F.2d 933. These two cases have resulted in a lack of uniformity in Arizona's attempt to determine the law regarding title to land adjacent to and beneath the Colorado River.

REASONS FOR GRANTING THE WRIT

A. Conflict of Authorities

1. The decision of the Court below

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A. Conflict of Authorities

1. The decision of the Court below

is in conflict with a recent Federal Court decision involving identical lands.

The essence of the decision in the instant case is that the "ordinary high water mark" and thus the boundary of the state's title to the bed of the river is the mark to which the water formerly rose at the time of or in the season of ordinary high water. This line with reference to the lands involved in the instant case is clearly shown on Page 2d of Appendix D attached to the petition. The "high water mark" established in Bonelli recognizes the natural flow of the Colorado River as it existed prior to the closure of Hoover Dam. Since that time the river has been to a great degree stabilized resulting in no usual high flow stages or seasonal ordinary high water.

2. The holding of the Court below is extremely different from the holding of the Court in United States v Claridge, 279 F. Supp

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The essence of the decision in the instant case is that the "ordinary high water mark" and thus the boundary of the state's title to the bed of the river is the mark to which the water formerly rose at the time of or in the season of ordinary high water. This line with reference to the lands involved in the instant case is clearly shown on Page 24 of Appendix D attached to the petition. The "high water mark" established in Bonelli recognizes the natural flow of the Colorado River as it existed prior to the closure of Hoover Dam. Since that time the river has been to a great degree stabilized resulting in no usual high flow, stages or seasonal ordinary high water.

2. The holding of the Court below is extremely different from the holding of the Court in United States v Claridge, 279 F. Supp

87, aff'd 9th Cir., 416 F.2d 933 where the identical questions involving lands adjacent to the Colorado River were presented for decision and the opposite result reached. The Court there held that the "ordinary high water mark" of the Colorado River is the point to which the waters usually reach today. That decision disregarded the changes in the "natural river" as it existed prior to the closure of Hoover Dam and the "stabilized river" as it exists today.

B. Importance of the Issue

The questions presented by the Petition for Writ of Certiorari are of great importance in stabilizing land title along the Colorado River. There is a great difference between the lands encompassed within the "high water mark" as defined in Bonelli by the Arizona Supreme Court and in Claridge by the 9th Circuit Court of Appeals. Page 2d of Appendix D shows the two "high water marks".

B. Importance of the Issue

The questions presented by the Petition for Writ of Certiorari are of great importance in establishing land title along the Colorado River. There is a great difference between the lands encompassed within the "high water mark" as defined in Donnelly by the Arizona Supreme Court and in Claridge by the 9th Circuit Court of Appeals. Page 24 of Appendix D shows the two "high water marks".

At the north end of the subject land these marks are nearly a half mile apart while at the southerly end they are nearly one mile apart. This difference varies for other points on the Colorado River as the size and width of the river flood plane varies.

Throughout the length of the Colorado River along the western boundary of Arizona, thousands of acres of land are encompassed between these two "high water marks" and title questions will continue to arise regarding which rule should apply in determining title to these lands.

The Attorney General of Arizona has met with private parties who claim title to lands adjacent to the Colorado River and with members of the legislature of Arizona in an attempt to solve the problems demonstrated by the Claridge and Bonelli cases. The Attorney General has advised the legislature that legislation in Arizona will not solve

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the conflict which exists because of these decisions.

CONCLUSION

The State of Arizona has made an exceptionally earnest effort to bring about a just solution to title problems along the Colorado River. They have entered into litigation with numerous parties, hoping that uniform decisions could be obtained to settle title questions. Under the decision of the Court below when compared with the decision in Claridge we see differences which can only lead to future litigation between private parties, between private parties and the State of Arizona and between the State of Arizona, private parties and the United States.

It is respectfully submitted that the Petition for Writ of Certiorari should be granted.

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CONCLUSION

The State of Arizona has made an exceptionally earnest effort to bring about a just solution to title problems along the Colorado River. They have entered into litigation with numerous parties, hoping that uniform decisions could be obtained to settle title questions. Under the decision of the Court below when compared with the decision in Claridge we see differences which can only lead to future litigation between private parties, between private parties and the State of Arizona and between the State of Arizona, private parties and the United States.

It is respectfully submitted that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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